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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,311	07/10/2003	Don Tabor	03-11670	3584
7590	09/22/2004		EXAMINER	
Louis J. Bachand P.O. Box 1508 La Canada, CA 91012			SWIATEK, ROBERT P	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,311	TABOR, DON	
	Examiner	Art Unit	
	Robert P. Swiatek	3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 June 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,3,6-8,10,11,15-17,19-23,25 and 26 is/are rejected.
 7) Claim(s) 2,4,5,9,12-14,18 and 24 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 30 June 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6-8, 10, 11, 15, 21-23 are rejected under 35 U.S.C. 102(a) as being anticipated by Huang (US 6,527,607 B1). The patent to Huang discloses a kite 1 and a figure 2 in the form of a panel attached to the kite via a hook-and-loop device 8. The hook-and-loop device—consisting of plural loops and hooks situated at discrete points relative to the kite 1 and panel 2—occupies only a portion of the surface area of the panel 2 such that the remainder of the unattached portion of the panel would move, however slightly, during flight of the kite. The kite 1 of Huang is considered to possess a body portion terminating in airfoil edge portions, which provide lift. Panel 2 is considered to constitute a “figure” inasmuch as this term by itself implies no fixed shape. As to claim 15, the term “whimsical” is largely subjective in nature to the extent that one could consider the panel 2 of Huang to be whimsical if desired. With regard to claim 10, the components of the luminescent panel 2 of Huang are deemed to constitute “fill material.”

Claims 16, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirschenbaum et al. (US 5,118,054). The Kirschenbaum et al. patent discloses a flexible housing in the

configuration of a bag 11 designed to be inflated when pulled through the air by means of line 20 attached to bag handles 15, 16. Handles 15, 16 are considered to be “mating structure” that *could* be employed to connect the bag to a flying toy. It is noted that neither of claims 16, 20 positively recites the combination figure and flying toy.

Claims 16, 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Milet (US 5,810,637). The Milet toy a flexible housing 30 in the form of a cylindrical, collapsible tail 32 removably coupled via tacks or adhesive (see column 4, lines 16-24, of Milet) to a ring-like structure 22. The ring-like structure 22 is considered to constitute a flying toy inasmuch as when it is connected to tail 32, the combination forms an aerodynamic article when thrown.

Claims 17, 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Milet. Although the tail 32 of Milet is not disclosed as being secured to ring structure 22 with hook-and-loop material, to use such material would have been obvious to one skilled in the art seeking to reduce costs and allow for easy replacement of a new tail or ring structure. As to claim 19, use of a fill material within the housing 30 of Milet—not specifically described—likewise would have been obvious to one skilled in the art wishing to reduce the likelihood of cuts or tears.

Claims 25, 26 are rejected under 35 U.S.C. 102(a) as being anticipated by Huang. A portion of the underside of panel 2—considered to be a “figure”—of Huang is coupled with hook-and-loop material 8 to kite 1. It is inherent from the Huang patent that the unattached portions of panel 2 would move periodically or intermittently during flight of the kite.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Lines 4, 5 of the claim are unclear and should be amended.

Claims 2, 4, 5, 9, 12-14, 18, 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments with respect to claims 1, 3, 6-8, 10, 11, 15-17, 19-23, 25, 26 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The patent to Forker (US 4,408,412) has been cited to provide an additional example of a toy aircraft.

Art Unit: 3643

Summary: Claims 1, 3, 6-8, 10, 11, 15-17, 19-23, 25, 26 have been rejected; claims 2, 4, 5, 9, 12-14, 18, 24 have been objected to.

RPS: 0703/308-2700
17 September 2004

Robert P. Swiatek

**ROBERT P. SWIATEK
PRIMARY EXAMINER
ART UNIT 322 3643**